IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WA. No. 277 of 2007

AGAINST THE JUDGEMENT IN WPC.34018/2006
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APPELLANT: PETITIONER:

M/S. HILL WOOD TRADERS,
N.H. ROAD, RAMANATTUKARA, KOZHIKODE,
REPRESENTED BY ITS MANAGING PARTNER, V.SHERIFF.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.P.K.VIJAYAMOHANAN
SRI.BOBBY JOHN
SRI.P.N.DAMODARAN NAMBOODIRI

RESPONDENTS: RESPONDENTS 1 & 2:
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1. THE INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, KOLLAM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SPL. GOVT. PLEADER SRI V. V. ASOKAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 08/03/2007, ALONG WITH WA NO. 288 OF 2007
WA NO. 293 OF 2007 WA NO. 303 OF 2007
WPC NO. 5911 OF 2007 WPC NO. 5912 OF 2007
WPC NO. 5916 OF 2007 THE COURT ON
08/03/2007 DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C.J. & M.N. KRISHNAN, J.

Writ Appeal Nos. 277, 288, 293 and 303 of 2007 &
W.P.C. Nos 5911, 5912 and 5916 of 2007

Dated : 8th March, 2007

JUDGMENT

Radhakrishnan, Ag.C.J.

Facts of these cases have been elaborately dealt with by the learned single judge while disposing of the writ petitions. We therefore find it unnecessary to reiterate all those facts for disposal of these cases.

2. The main contention urged by the Senior Counsel Sri M.K. Damodaran is that no effective opportunity was given to the appellants before initiating proceedings under section 45 A of the Kerala General Sales Tax Act, 1963. Referring to sub-section (2) of Section 45-A of the Act, counsel submitted that no order under sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter. Contention raised by the counsel has to be examined in the light of the facts of the cases.

3. We may therefore briefly refer to the facts for the disposal of all these appeals. Writ petitioner in W.P.C. No 33646 of 2005 is filed by

Moideen, Proprietor, Al-Ameen Wood Industries, Kanhangad raising the allegation that all the purchases were effected by the parties in the proceedings using his name which resulted in this court ordering a vigilance enquiry. Vigilance enquiry was accordingly conducted and report was placed before this court. This court after perusing the report passed an order directing the Commissioner to take appropriate action against those who have made bogus sales and accounted the same at concessional rates in the name of Moideen, proprietor of Al-Ameen Wood Industries,. Kanhangad. Commissioner issued notice to all the parties. Parties were represented by advocates and various documents were produced. Witnesses were cross-examined and ultimately it was revealed that the bogus sales were effected in the name of Moideen which resulted in imposing penalty under section 45-A on the appellants herein.

4. Section 45A notices were issued to all the parties. Date of hearing was fixed specifically stating that the objection should be filed within seven days. Section 45-A notice was issued to Hill Wood Imports and Exports Private Limited on 26.9.2006 fixing the date of hearing in respect of the assessment year 2001-2002 as 28.10.2006. Same was the date fixed for hearing for the assessment year 2002-2003 as well; so also for the year 2003-2004. It was specifically stated in the notices that objection, if any,

should be filed within seven days and date of hearing was notified as 28.10.2006. Section 45-A notice was also issued to Hillwood Traders on 29.09.2006 fixing the date of hearing as 28.10.2006 relating to the assessment years 2001-2002, 2002-2003 and 2003-2004. Section 45A notice dated 25.09.2006 was also issued to Hillwood Industries fixing the date of hearing as 28.10.2006 which relate to the assessment year 2001-2002. Notices dated 26.9.2006 were also issued to Hillwood Industries fixing the date of hearing as 28.10.2006 in respect of the assessment years 2002-2003 and 2003-2004. Notices dated 27.09.2006 were also issued to Mangali Timbers fixing the date of hearing as 28.10.2006. Above mentioned facts would clearly indicate that at least one month's time was granted to the parties to file their objection and date of hearing was fixed after one month from the date of notice. That would be sufficient for the purpose of filing objection and to get ready for the hearing. Nobody was prepared to appear on the dates notified. Later, on 27.10.2006 yet another notice was issued to the parties stating that no adjournment would be given and the date of hearing was fixed as 8.11.2006. Nobody got ready for hearing on the said date. Again parties were seeking time. Considering the facts and circumstances of the case, we are not prepared to say that the Department had not given any effective opportunity to the parties. When

date of hearing was fixed and notice was sent to that effect, it is the responsibility of the parties to get ready for hearing on the date notified.

5. We are also not prepared to say that there is any violation of the principles of natural justice taking note of the entire facts and circumstances of these cases. Decisions cited by the appellants would not apply to the facts of this case. In any view of the matter, appellants have got alternate remedy of appeal before the appellate authority. Therefore appellate authority would examine the contentions raised by the appellants herein while disposing of the appeals. We make it clear, if the appellants have not filed appeals so far, they are given two weeks' time to file appeals in the event of which appellate authority would take note of the contentions raised by the appellants and pass appropriate orders in accordance with law. We further make it clear we are not expressing any opinion on the merits of the case since appellants have to avail of the alternate remedy of appeal. The appeals and the writ petitions are disposed of as above.

SD/-
K.S. RADHAKRISHNAN
Ag. Chief Justice

SD/-
M.N. KRISHNAN
Judge

08/03/2007
en/ [TRUE COPY]